

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA08-836

JOSEPH POWELL

APPELLANT

V.

PRODUCERS RICE MILL; Liberty
Mutual Insurance Company

APPELLEES

Opinion Delivered March 18, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F410313]

AFFIRMED ON DIRECT APPEAL;
AFFIRMED ON CROSS-APPEAL

JOSEPHINE LINKER HART, Judge

The parties appeal from the decision of the Workers' Compensation Commission awarding Joseph Powell nursing services that are to be provided by his wife. Powell argues that the award of two hours a day, seven days a week, of nursing services is inadequate, and Producers Rice Mill and its insurance carrier (collectively, Producers) argue that nursing services are not reasonably necessary. We affirm on both the direct and cross-appeals.

In addition to other services, an employer must promptly provide for an injured employee such nursing services as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a) (Supp. 2007). What constitutes reasonable and necessary treatment is a question of fact for the Commission. *Gansky v. Hi-Tech Eng'g*, 325 Ark. 163, 924 S.W.2d 790 (1996). The services contemplated under "nursing services" are those rendered in tending or ministering to another in sickness or infirmity. *Little Rock Convention & Visitors Bureau v. Pack*, 60 Ark. App. 82, 959 S.W.2d 415

(1997). In considering this question on appeal, the evidence is viewed in the light most favorable to the Commission's decision, and the decision is affirmed if it is supported by substantial evidence. *Gansky, supra*.

Powell sustained a compensable injury when he fell into an auger at a rice mill, which resulted in the loss of both legs above the knee. The injury also resulted in anal sphincter incontinence due to laceration wounds in the sphincter area and a bladder/rectal fistula. Producers accepted that Powell is permanently and totally disabled. At issue are the services provided to Powell by his wife. The Commission awarded two hours of nursing services each day for the following: (1) precautionary nursing services to assist Powell with his balance while bathing; (2) assistance in performing exercises in the home; (3) back massages; (4) changing bed linens because the injuries he suffered cause leakage. Additionally, the Commission provided a one and one-half hour award of nursing services to Powell for each day his wife drove him to appointments up until Producers purchased Powell a vehicle, and a one-half hour award for each day of wound care when home health nurses were not present until such time as the wound care no longer was necessary.

In the cross-appeal, Producers asserts that these nursing services are not reasonably necessary. Producers argues that Powell is not entitled to nursing services for transportation to doctor's appointments by his wife, as he had a modified pickup truck that he was able to drive to appointments. We note, however, that the Commission only awarded benefits until the time Producers provided Powell with a modified vehicle. Producers also challenges the award for wound care, noting that nurses were provided. But again, the Commission only

awarded benefits for that purpose on days when nurses were not present. Though Producers diminishes the importance of the assistance provided by his wife in wound care, Powell testified that her assistance was necessary. Further, wound care has previously been acknowledged as a nursing service. *See Tibbs v. Dixie Bearings, Inc.*, 9 Ark. App. 150, 654 S.W.2d 588 (1983). We cannot say that substantial evidence does not support the Commission's finding that this nursing service was reasonably necessary.

Producers argues that assistance in bathing is not necessary. Powell, however, testified that he has twice fallen in the shower. We also observe that assistance in bathing is a nursing service. *See Dresser Minerals v. Hunt*, 262 Ark. 280, 556 S.W.2d 138 (1977). Producers also asserts that the massages are not reasonably necessary because there is no order for massages in the record. The Commission, however, had before it testimony that Powell is a double amputee and suffers from back pain. Further, massages are a nursing service. *See id.* Producers further argues that Powell does not need his wife's assistance in performing home exercises. Powell testified to the contrary. Also, such assistance is a nursing service. *See Pickens-Bond Constr. Co. v. Case*, 266 Ark. 323, 584 S.W.2d 21 (1979). Producers also challenges whether the changing of bed sheets as a result of the claimant's incontinence is necessary, as Powell could wear adult diapers and use bed pads. Powell, however, testified that his injuries cause leakage, and he cannot change the linens himself. Further, changing linens is a nursing service. *See id.* We cannot say that substantial evidence does not support the Commission's finding that these nursing services are reasonably necessary. While Producers makes additional arguments regarding whether other matters constituted nursing services, we need not address

them, as the Commission made no findings that such matters are or are not nursing services. Producers also asserts that Powell's wife could work outside the home. The Commission, however, agreed that Powell did not need constant care.

On direct appeal, Powell asserts that the Commission's limitation of nursing services to two hours a day is not supported by substantial evidence. Powell notes that his wife provides assistance in bathing, driving, massages, wound care, home exercises, use of a TENS unit, and changing bed linens. He argues that, considering the number of activities his wife performs, the award should have been five hours a day, not two hours a day. The Commission had before it the testimony of Powell and his wife regarding the nature of the services provided. Powell, however, did not provide any evidence regarding the amount of time his wife expends in completing the daily nursing services. After considering what services are provided, the Commission awarded two hours a day of nursing services. Given the state of the evidence, we cannot say that substantial evidence does not support the Commission's decision to limit nursing services to two hours a day.

Affirmed on direct appeal; affirmed on cross-appeal.

VAUGHT, C.J., and BROWN, J., agree.